IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

J U D G M E N T

THE STATE OF RAJASTHAN. V. SHAITANA RAM & OTHERS.

D. B. CRIMINAL APPEAL NO. 418/85

Under Section 378 (iii) & (i), Cr.P.C.,against the Judgment dated 25-06-1985,passed by Shri S.L.Jain, RHJS,Additional Sessions Judge, Nagaur, in Sessions Case No. 66/84.

DATE OF JUDGMENT :::: 09-10-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. J.P.S.Choudhary, P.P., for the State – appellant.

BY THE COURT: (PER HON'BLE MR. BHANDARI, J.):-

Aggrieved by the judgment dated 25-06-1985, passed by the Additional Sessions Judge, Nagaur, in Sessions Case No.66/84, State of Rajasthan has preferred this appeal.

The facts giving rise to the present appeal are that on 27.10.1984, Lichhman Ram lodged an F.I.R. with Police Station, Nagaur, stating that Shaitana Ram and others were in their field at around 5.30 P.M. Shaitana Ram entered 10 – 15 goats in their existing Gwar crop. His father stopped those goats to enter in the file on 3 – 4 occasions. However, on fourth occasion, when his father had taken those goats to release them through the Gate, then Amna Ram, Chhota, Chainiya, Shaitana Ram, Bhaira Ram, Sanwata Ram and Kalu Ram came to their field. Amna Ram then caused a blow on his father's head by "Pharsi". Thereafter, Shaitana Ram charged his father with lathi along with others. His father lost his consciousness. Immediately his mother came to save his father and, in that process, Amana Ram sustained one lathi blow to his mother, out of which mother sustained injuries on her eye as well as on the back side of head. The Police, thereafter, registered a case under Section 147, 148, 149, 447, 307 and 323 of IPC and Section 24 of the Cattle Trespass Act, being FIR No.527/84. The deceased Baluram, thereafter, died on the next day, i.e., 28.10.1984. Thus, Section 302, IPC, was also added.

The Police, thereafter, conducted usual investigation and, thereafter, challan was filed against the apprehended accused before the Chief Judicial Magistrate, Nagaur, from where the

case was committed to the trial Court. The case was initiated against the accused under Sections 447, 302/34 and 323, IPC. The trial Court, thereafter, framed charges against the accused under Sections 302/34, 447 and 323 of IPC. The accused denied charges and claimed trial.

At the trial, the prosecution produced twenty witnesses and exhibited forty documents, whereas, in defence, the statements of four witnesses were recorded, but no document was exhibited.

The statements of the accused were recorded under Section 313 of Cr.P.C. The trial Court acquitted all the accused as charges against them were not found to be proved beyond doubt.

The learned Public Prosecutor, appearing for the State, argued that the trial Court acquitted all the accused, mainly on the ground that eye witnesses produced by the prosecution turned hostile. Thus, prosecution story was not supported by the witnesses. However, the trial Court ignored that witnesses Vishnu Ram and Teja Ram stated that accused Shaitana Ram and Chhotu Ram along with others have taken part in the assault which is otherwise a fact confirmed from the FIR. Therefore,

when other eye witnesses have turned hostile, then the trial Court should have passed an order of conviction based on the statements of Vishnu Ram and Teja Ram, more so, when the lathi was recovered from Shaitana Ram carrying blood of the group matching to the blood group of deceased Babu Ram. Therefore, according to the learned Public Prosecutor, it was not a case where accused could have been acquitted from the charges framed against them, hence it was prayed that the judgment of the trial Court cannot sustain on reasonings given for acquittal of the accused. It was, thus, prayed that the accused by convicted by setting aside the judgment of the trial Court.

The perusal of the record shows that eye witnesses have not supported the prosecution story, more so, when mother of complainant or otherwise wife of deceased herself had not supported prosecution story. Thus, prosecution created two other eye witnesses, and based on their statements, prosecution tried to prove their case, though presence of both the witnesses has not been shown in the FIR. Thus, the trial Court was right in recording its finding in favour of the accused, because case was not found to be proved beyond doubt. So far as the recovery of lathi is concerned, the recovery and Forensic Science Laboratory report cannot be believed as the

samples were not kept properly and the trial Court has otherwise taken into consideration this aspect of the matter also while passing the order of acquittal, therefore, judgment having no perversity, deserves to be maintained.

We have considered the submissions of the learned Public Prosecutor, appearing for the State – appellant and scanned the matter carefully.

The prosecution case was started with lodging of FIR by Lichhman Ram at around 9.30 P.M. on 27.10.1984, wherein basic story given was that accused Shaitana Ram's 10 -15 goats entered and started grazing in the field belonging to deceased, where especially Gwar crop was standing. Deceased Babu Ram turned them out on 3 – 4 occasions and on fourth occasion, when deceased was making an attempt to take all the cattle towards main gate, then accused came in group and caused blow to the deceased Babu Ram. Since FIR contains specifically name of Harman Ram, having caused one bloe by "Pharsi" and Shaitana Ram charging deceased with lathi, a specific case was tried to be projected in the FIR itself because other accused were not assigned any weapon in specific terms, identifying their blows on the person of deceased. The prosecution filed challan only against Shaitana Ram, Chetan and Chhotu Ram, leaving

Harman Ram against whom a specific allegation of causing one blow by "Pharsi" was existing.

Considering the statements of witnesses, we find that PW 2 Muli w/o. deceased Balu Ram has not supported prosecution case, inasmuch as, she had stated that some body charged her husband, but she does not know who caused such injuries. The said witness was turned hostile. PW 8 Parsa Ram is son of deceased Balu Ram. However, the said witness has also not supported prosecution case, inasmuch as, witness stated that he had seen Balu Ram in unconscious condition, but he has not made allegation against accused for any act which may show that accused has caused injuries to deceased Balu Ram. The said witness was also declared hostile. PW 5 Riddha Ram, PW 6 Inder Singh, PW 7 Balla Ram and PW 4 Panna Ram were produced by the prosecution showing them to be eye witnesses. However, none of the witnesses supported prosecution case as they had stated that that have not seen the occurrence. Therefore, all those witnesses were also declared hostile.

PW 1 Mst.Nosi has also not supported prosecution story as she had stated that she has not seen the occurrence, therefore, said witness was also declared hostile. PW 3 Lichhman is son of deceased and otherwise, lodged FIR, has not supported

prosecution case as in his Court statement, witness stated that in Ex.P-3, he has not given the name of accused. Therefore, even the complainant has not supported prosecution case. Therefore, said witness was also declared hostile. PW 9 Suva and PW 10 Kishna were also declared hostile and those witnesses categorically stated that they have not given any story to the Police as is being written in their police statements. Both the witnesses were also declared hostile.

PW 11 Surja Ram was also declared hostile as he had also not supported prosecution case. Now comes PW 16 Hari Ram who stated that sealed packets were sent for Forensic Science Laboratory (FSL) report to Jaipur. However, an objection was raised with regard to seals of the packets. PW 17 Mohammed Manuvar Alam stated that when an objection was raised by FSL, then he had received sealed packets through Hari Ram and after doing the needful, four sealed packets were sent to FSL, Jaipur.

PW 13 Premnath was the Investigating Officer who stated that on 06.11.1984, he had recovered main root of “Khejari”, at the instance of Shaitana Ram and further recovered a “Dhulia” A lathi was also recovered at the instance of the accused. Thus, prosecution had tried to support their case, based on those

recoveries, because occurrence could not otherwise be proved, because all the eye witnesses of occurrence have turned hostile.

The learned trial Court considered the matter in regard to opinion of FSL given after receipt of four sealed packets. After considering all the circumstances, the trial Court did not find that the prosecution has submitted convincing evidence to prove case against the accused beyond doubt, especially when the case was based on circumstantial evidence, in view of the fact that the eye witnesses turned hostile. The trial Court found that even circumstantial evidence could not be produce by the prosecution so as to connect accused with the crime, more specifically when the allegation of causing head injury by "Pharsi" was against Amana Ram, but against whom prosecution has not even filed challan and so far as Shaitana Ram is concerned, allegation against him was of causing injuries by lathi. However, said part of the story was not supported by the witnesses. Therefore, in absence of any convincing material against the accused, more specifically when even the recovered items were not even properly sealed, the trial Court passed an order of acquittal of the accused.

Considering the argument of the learned Public Prosecutor, even if the statement of witness Teja Ram is looked into, then the witness has shown himself to be the eye witness of the occurrence. However, his name does not appear in the FIR

and otherwise also, in the cross-examination, the witness had admitted that Police had not recorded his statement and he otherwise had not given story of occurrence to anyone. Looking to the statement of the said witness in the cross-examination, it is unusal that a person had seen the occurrence, will not tell about it to the villagers or to the police, therefore, witness Teja Ram is not a witness of truth, as his statement is unnatural, hence not safe to rely and otherwise, presence of said witness is not shown in the FIR. Therefore, no reliance can be placed on the statement of the said witness. Therefore, we do not find any force in the argument of the learned Public Prosecutor for the State – appellant, more so, when Vishnu Ram is not being produced as witness, though during the course of argument, Vishnu Ram has stated to be eye witness. In these circumstances, we could not find any perversity in the judgment of the trial Court. Hence, the judgment of the learned trial Court deserves to be affirmed.

In view of the discussions made above, we are of the view that the appeal preferred by the State is of no substance, hence it deserves to be dismissed and accordingly same is dismissed.

(MUNISHWARNATH BHANDARI),J.(BHAGWATI PRASAD),J

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